

1 Your Name: Subramanian Subbiah
 2 Address: 104 Elm Street
 3 Phone Number: 650 431 6824
 4 Fax Number: _____
 5 E-mail Address: subbiah@i-dns.net
 6 Pro Se Plaintiff

FILED

JAN 24 2022

CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

CV 22 00457

11 Subramanian Subbiah
 12 Donna Chu
 13 Plaintiff,
 14 vs.
 15 United States
 16 (IRS, Dept. of Treasury)
 17 _____
 18 _____
 19 Defendant.

Case Number [leave blank]**COMPLAINT****SK**

DEMAND FOR JURY TRIAL

Yes ☐ No ☒**PARTIES**

- 21
22 1. Plaintiff. *[Write your name, address, and phone number. Add a page for additional plaintiffs.]*

23 Name: Subramanian Subbiah
 24 Address: 104 Elm Street, Menlo Park, CA 94025
 25 Telephone: 650 431 68 2

COMPLAINT

PAGE 1 OF 13 [JDC TEMPLATE – Rev. 05/2017]

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_____. 2nd Plaintiff

Donna Chu

104 Elm Street , Menlo Aprk, CA 94025

Tel: 650 831 467

COMPLAINT

PAGE 2 OF 13 [JDC TEMPLATE – 05/17]

2. Defendants. [Write each defendant's full name, address, and phone number.]

Defendant 1:

Name: Independant Office of Appeals, IRS, Department of TreasuryAddress: 1040 Waverly Ave, Stop 906, Holtsville NY 11742Telephone: 631-977 6512

Defendant 2:

Name: _____

Address: _____

Telephone: _____

Defendant 3:

Name: _____

Address: _____

Telephone: _____

JURISDICTION

[Usually only two types of cases can be filed in federal court, cases involving "federal questions" and cases involving "diversity of citizenship." Check at least one box.]

3. My case belongs in federal court

under federal question jurisdiction because it involves a federal law or right.[Which federal law or right is involved?] Appeal of a Tax Refund denied for late filingdespite waiver allowed for being "financially disabled owing to serious medical crisis".under diversity jurisdiction because none of the plaintiffs live in the same state as any of the defendants and the amount of damages is more than \$75,000.

VENUE

[The counties in this District are: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo, or Sonoma. If one of the venue options below applies to your case, this District Court is the correct place to file your lawsuit. Check the box for each venue option that applies.]

4. Venue is appropriate in this Court because:

- ☐ a substantial part of the events I am suing about happened in this district.
- ☐ a substantial part of the property I am suing about is located in this district.
- ☒ I am suing the U.S. government, federal agency, or federal official in his or her official capacity and I live in this district.
- ☐ at least one defendant is located in this District and any other defendants are located in California.

INTRADISTRICT ASSIGNMENT

[This District has three divisions: (1) San Francisco/Oakland (2) San Jose; and (3) Eureka. First write in the county in which the events you are suing about happened, and then match it to the correct division. The San Francisco/Oakland division covers Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Sonoma counties. The San Jose division covers Monterey, San Benito, Santa Clara, Santa Cruz counties. The Eureka division covers Del Norte, Humboldt, Lake, Mendocino counties, only if all parties consent to a magistrate judge.]

5. Because this lawsuit arose in San Mateo County, it should be assigned to the San Francisco Division of this Court.

STATEMENT OF FACTS

[Write a short and simple description of the facts of your case. Include basic details such as where the events happened, when things happened and who was involved. Put each fact into a separate, numbered paragraph, starting with paragraph number 6. Use more pages as needed.]

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- Next Page -

COMPLAINT

PAGE 4 OF 13 [JDC TEMPLATE - Rev. 05/2017]

6 . I (Subramanian Subbiah) have lived in California for over 30 years, with my spouse Donna F. Chu and have filed joint-tax returns with her to the IRS from 1998 onwards. Since then, every year until 2014 when my medical problems started, we filed on time and were eligible for and routinely got hefty refunds of a few tens of thousands of dollars each tax year.

7 . Starting in April 2012 and annually until 2018, I had a series of progressively worse, extremely serious unexpected medical emergencies that required a novel stem cell clinical trial treatment in Los Angeles where I ended up being the first patient ever to have my heart partially rehabilitated from imminent sure-death to a functional life now, after years of recovery.

. These medical incidents are summarized in detail in the attached Exhibit 2 within a letter written as an Appeal to the IRS, with Appendices A through F each being the relevant hospital records for (a) Near-fatal Diabetic Ketoacidosis (3rd main reason for ER deaths) in April 2012 (Stanford) which led to subsequent heart attack complications, (b) First Heart Attack (lost 50% heart function, miracle survival with 2 stents but facing sure deterioration and death in a year) in April 2013 (Wisconsin), (c) Two more stents to stabilize heart condition in May 2013 (Los Angeles), (d) Last recruit for a novel stem-cell, multi-year treatment to reverse heart damage (first patient ever to reverse partial damage enough to continue living) in June 2013 (Los Angeles), (d) Second Heart Attack in September 2015 (Stanford, two more stents), (e) Third Heart Attack in October 2016 (Stanford, one more stent) and (f) Fourth Heart Attack in October 2017 (Stanford, another stent).

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8 . During this time my spouse Donna Chu, was the main bread winner and had a highly stressful global job requiring at least 2 multi-day work trips a month mainly to the East Coast and mid-West as well as at least a few trips a year to Europe, South America and Asia. While I was in hospital, fatigued or recovering, she also had to take care of helicopter-parenting two young teenage boys already embarked on very active schedules from before my disability. Additionally she was the sole "responsible" child who had to look after very sick, elderly parents living in New Jersey who refused to move to look after very sick, elderly parents living in New Jersey who refused to move West in their final years and dying a year after each other at age 85 (Mom) and 100 (Dad) respectively (Death Certificates attached as Exhibit 7 and 8). They were both in and out of many many emergency room hospitalizations they unexpectedly survived for a few years. For these years, they needed 24/7 in-home health aide care that had to be supervised daily from afar by us, with my wife visiting New Jersey as often as 15 times a year on short specific trips or on the side of work-related trips. After both died, the estate was a financial mess with unclear records with the estranged sibling-children squabbling. This needed a further year or two of effort from her, including many more East coast trips. My own parents are in their 80's and also in poor health but live in Singapore (I moved to USA for college) and need my own separate attention remotely when I can with their constant paperwork (their English is poor, in English-speaking Singapore). My sister who lives nearby manages day-to-day issues and dealing with my estranged brother.

9 . Just prior to my medical emergencies I had left my academic position to be involved in start-up business/investment and made a number of early stage investments in biotech/computing planning to be very involved in the early risky stages with the

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_____. co-founders and colleagues. However, my sudden inability to oversee, resulted within a couple of years (and during the period of my many heart attacks) in 100% losses totaling some hundreds of thousands of dollars, mostly my own savings as opposed to my wife's. These companies failed and went bankrupt, and the main principals disappeared or unwilling to communicate and provide the necessary tax documents for filing these losses.

10 _____. After my 4th and last heart attack and more stents, my situation began to stabilize by mid-2019. While still disabled with many headaches and constant fatigue (brought on by half functioning heart and 18 pills a day), I summoned enough energy and focus to look into filing our joint taxes for the intervening years up to the then due 2018 tax year for both IRS, California State and the random, odd sundry state that my wife's work took her each tax year for brief periods (NY, PA, CO, NJ, MA). Having once been _____, professionally trained as an auditor/accountant (abandoned midway through professional CPA certification and pursued an academic career instead) I am the one who has always been doing the tax filings for both of us for over two decades before. At this time, I also managed with some luck, to find one of the "missing" investment partners who was able to provide the necessary documents to file and claim the substantial losses.

11 _____. When I contacted the IRS by phone, they told me while the law allows filing within 7 years (which we now have for every year), refund claims, even substantial ones to the tune of \$50000 a year, expire after 3 years and that we were more than a year late - already in October 2019 for the tax year 2014 (ending Dec 2014). However, seeing our situation and being sympathetic, they suggested we file taxes for 2014, which was required anyway and formally claim the \$52 272.12 refund. Then to wait for the expected rejection _____, and file an IRS Appeal on the grounds of "financial disability brought about by near-fatal medical conditions" and seek a waiver. So, we filed tax year 2014 in October 2019. We also filed subsequent years that were not late.

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12 . As expected, the IRS responded with a rejection citing the 3-year refund limit in January 2020 (Exhibit 1) and gave us a short time frame to appeal. We summarized our case chronologically as in Exhibit 2 (with supporting medical evidence as in Appendices A to F therein) and sent it in on Feb 19, 2020 to the Appeals Office, expecting a 60-day IRS required turn-around response. Then Covid struck and the IRS was unreachable by phone (countless busy signal phone calls and waiting hours and being dropped) or mail as we _____ sought a response for the next 18 months.

13 . Suddenly, on September 3, 2021 the IRS Appeal Office responded (Exhibit 3), requiring two further pieces of documentary evidence (we had sent over 50 pages already). The first was easy, being a personal statement from me, stating that I had not authorized anyone besides myself to look after financial matters during this period. (In fact, I have never authorized anyone including my spouse since my investment matters are too complex for her – both the failed investments and prior stock portfolios that I actively _____ traded for years to supplement my income as a poorly paid academic researcher). The second was a formal letter from the Los Angeles physician who saved my life from the first heart attack vouching for the near-fatal and severely disabling nature and seriousness of the event. However, as after my early treatment far away from home, I was now under the care of a local cardiologist at Stanford, I needed time to locate the former physician. Given that this physician has performed more heart stent surgeries than _____ anyone else globally and therefore very busy I needed more than 2 weeks to get a letter from him. So, I responded to the IRS Appeals Office with the one piece of information (personal statement) they wanted and asking for a short time extension to get

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_____. the physician statement on Sep 10, 2021 (Exhibit 4 with Appendix A).

14. In the meantime, since the IRS Appeals Officer in their Holtsville NY office had volunteered to talk to me in case of questions. So, I called and talked to him and he was sympathetic given the sum involved, our plight and it being our hard-earned money. He said our tax filings look good, and my claim for financial disability due to serious medical condition was strong and that he would give us extra time to find the original physician.

15. Luckily, I found the physician who acted promptly and was able to send the letter exactly as IRS wanted on Sep 17, 2021 without invoking the time extension (Exhibit 5).

16. On Sep 24, 2021 we received a final rejection from the IRS Appeals Office but with the recommendation that we file a lawsuit against the IRS in either the United States District Court with Jurisdiction (our San Mateo County, CA, address is under the US District Court of Northern California, in San Jose) or the United States Court of Federal Claims in DC. We had expected this, since a few days earlier the very sympathetic Appeals Officer, had called us to tell us that while our case was thoroughly deserving in of itself, and

_____. especially in comparison with many others they routinely approve, there was an unfortunate technicality that prevented any refund. The hurdle: Since my spouse was a joint filer, she could have filed for both of us, despite the fact I had never authorized (and

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_____. never will actually given the complexity of my portion of the filings) her to do so and IRS had already insisted on that fact as a personal statement from me just shortly before. Knowing that we had been so hopeful (from the prior conversation we had and the then seemingly strong merits of our case), the Appeals Officer recommended that we file a lawsuit because in these types of cases, a judge would have the power to overturn the legal hurdle they were stuck with. I countered by saying it would be a lot of work and a lot of expense for likely another failed outcome. I still get very tired easily and had another final tax year to file etc. Also, thanks to Covid, the Appeals Office had taken 18 months, much longer than the 60-day promised response time, the 2-year limitation on filing a lawsuit from day of original claim rejection (not appeal rejection) was also mostly run out (through no fault of our own) leaving us only a few months to figure out how to file a lawsuit. (It seems a serious national health crisis can unilaterally allow the IRS to give itself an illegal 16-month delay in responding without repercussions while a far more serious individual health crisis cannot allow the taxpayer to be late by a year or no extension for the time taken away by the IRS's own delay to file a lawsuit in response). He suggested I could self-file a lawsuit (to save costs but of course needing more time to figure out) and that given the situation the IRS Appeals Office would be very supportive if the court ruled in our favor for a full refund. It was not the intention of the IRS to "steal" hard-earned dollars from long-time taxpayers who had truly extenuating circumstances. So, he very strongly recommended us to file a lawsuit and pointed to resources. The suggested argument for the lawsuit was to point out the situation (as described above) that only I could have done the filing, since my wife was (a) so busy taking care of all of us as calamity struck over and over again while looking after kids, me, her dying parents and holding onto a stressful job as the only bread-winner of the family, (b) had no idea who or how to contact the people involved in my business losses whom I myself could not find (c) I had not give her authorization to act for me or look at my separate financial records and still will not (it is too complex for her skillset).

COMPLAINT

PAGE 10 OF 13 [JDC TEMPLATE - 05/17]

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17 . Since then, we started looking at the filing process and by the time we figured it out and asking lawyer friends to find time to help with research etc., Covid-Omri turned up and made me a prisoner at home (I will surely die if I catch Covid owing to major heart and diabetes complications) especially after some relatives and neighbors contracted Omri and I myself was under the weather for a while which ended up not being Covid.

18 . In any case, we have managed to get this far and are filing this lawsuit and hoping for the best, but the story so far does not seem to suggest a favorable outcome – hundreds of hours on phones, and filings and appeals to get our own earned \$52 271.72 of money back has failed to date.

CLAIMS**First Claim**

(Name the law or right violated: Right to a late tax refund owing to financial disability)

(Name the defendants who violated it: Independent Office of Appeals, IRS, Dept of Treasury)

[Explain briefly here what the law is, what each defendant did to violate it, and how you were harmed. You do not need to make legal arguments. You can refer back to your statement of facts.]

1 . I filed a tax refund claim late because I was very sick and near death owing to multiple medical crisis. I am allowed by law to get a waiver for the late filing because of my being financially disabled by way of a medical situation. The IRS Independent Office of Appeals found that I was personally so disabled. However despite my claim that I did not _____, authorise anyone including my spouse who is a joint-filer to act on my behalf on financial matters they ruled that as she was a joint-filer she could have filed it on time while I was sick. However, the IRS Office of Appeals felt strongly that I was deserving of favorable treatment and suggested this lawsuit, since as explained in the statement of facts _____, my wife was overwhelmed trying to help me, my young kids, and her 10yr old dying parents one after other while being the only bread-winner at a stressful job that required extensive travel. Also she did not know anything about substantial losses I incurred after I lost ability to oversee business investments with colleagues who went _____, bankrupt and disappeared and unwilling to communicate proper documents to file tax losses.

2 . Knowing that the IRS Appeals Office is supportive, I seek the court to overcome the technical hurdle preventing IRS from giving an undisputed refund of \$52,271.72 to me.

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DEMAND FOR RELIEF

[State what you want the Court to do. Depending on your claims, you may ask the Court to award you money or order the defendant to do something or stop doing something. If you are asking for money, you can say how much you are asking for and why you should get that amount, or describe the different kinds of harm caused by the defendant.]

_____. Refund me in full \$52 271.72 for the tax year 2014.

DEMAND FOR JURY TRIAL

[Check this box if you want your case to be decided by a jury, instead of a judge, if allowed.]

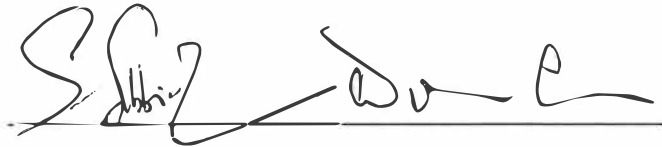
☐ Plaintiff demands a jury trial on all issues.

Respectfully submitted,

Date: 20 January 2022

Sign Name:

Print Name:



Subramanian Subbiah and Donna F Chu